

OPENING STATEMENT OF REP. EDWARD J. MARKEY (D-MA)
SUBCOMMITTEE ON ENERGY AND POWER
MARKUP OF HYDROELECTRIC POWER LEGISLATION
MAY 16, 2000

Thank you, Mr. Chairman.

When I read the newspapers last Thursday morning, I came across two fascinating articles. First, the front page of the Washington Post reported that some of the nation's largest electric utilities have been secretly funnelling millions of dollars into two shadowy front groups to stop Congress from enacting legislation to bring competition and consumer choice to the electric power industry. Then, I turned to the Wall Street Journal, which had a front-page story reporting that the patchwork quilt of deregulatory efforts at the state level has left our nation's electricity supply vulnerable to blackouts and brownouts. According to the article, competitors are reluctant to invest in new generation facilities until they know what the rules are and incumbent utilities are afflicted by planning paralysis as they sort out what business model they want to follow in the newly emerging competitive environment.

And this Subcommittee has not done much to fix things. Under the weight of the massive lobbying clout of the big utility monopolies, the Subcommittee approved legislation last fall H.R. 2944 -- that undermines the objective of creating a truly competitive electricity market. Little wonder that one of the utility front organizations mentioned in the Washington Post article is running daily advertisements in Congress Daily touting the virtues of this bill.

And now that we have taken care of the utility monopolist's goal of derailing any federal legislation to create a truly competitive and fair national marketplace for electricity, the Subcommittee is today turning to another item on the big utilities' legislative wish-list: gutting the rules governing the relicensing of hydropower facilities.

Today, FERC's relicensing procedures require the resource agencies to consider the environmental and resource impact of a hydroelectric plant on the public's waterways, recreation, navigation and the environment. This relicensing process provides the public with an opportunity to assure that critical environmental, recreational, navigational, flood control, irrigation, other values are being properly served. The utility monopolists find this process inconvenient to them. So they're trying to eviscerate the resource agencies' role in the relicensing of these hydropower facilities.

While I understand that the industry finds the complexity of the relicensing process frustrating, I must note that licensees hold their licenses for up to 50 years. From 1985 to 1986, I spent considerable time and effort, as the Chairman of the Energy Conservation and Power Subcommittee, in forging the consensus that became the Electric Consumers Protection Act of 1986, or ECPA. In my view, H.R. 2335 breaks the deal we crafted back then.

Let me explain why. ECPA included provisions that required that FERC base its recommendations for mitigating the adverse effects of a license on the recommendations of Federal and State resources agencies and mandated that FERC negotiate with those agencies in the event of disagreements. ECPA also required FERC to give equal consideration to the environment, fish and wildlife, and other nonpower values as it gives to power and development objectives in making licensing decisions. Congress enacted these reforms then because it was concerned that FERC was not according sufficient weight to environmental and nonpower concerns as it reviewed requests for relicensing of hydroelectric facilities. H.R. 2335 rewrites the procedural and substantive rules and standards to systematically hamstring the resource agencies' ability to carry out their missions and effectively participate in a

relicensing procedure.

I would note that when we passed EPCA, we did so with unanimous bipartisan support of Members of the Committee and of the House and with the endorsement of both the environmental community and the support of the electric utility industry, including the Edison Electric Institute and other industry trade associations. Indeed, the legislative history of the bill shows that it had the support of such wild-eyed liberals as Frank Murkowski, Mike Oxley, and Ted Stevens. There were no calls at the time for repeal or weakening of the resource agencies mandatory conditioning authority back then, even though this authority had been exercised by the agencies for decades.

So what has changed? Little that I can see, other than the fact that FERC, at the direction of Congress, must now give greater weight to the adverse environmental effects of a dam when it considers relicensing. It does so, with very little apparent harm to the industry. FERC reports that this industry has completed its most successful year in history, and continues to represent one of the cheapest sources of electric power available. Now, since many of the dams that are coming up for relicensing were first licensed before Congress enacted many of the environmental laws now on the books, it is inevitable that the industry will in some cases be required to take actions to rectify harm to fish and wildlife, natural habitat, recreational or other values. In my view, industry has a very high burden of proof to meet if it is to seek alterations in the process that might sacrifice these critical nonpower values. That burden has not been met. That is why a broad coalition of national environmental organizations, including American Rivers, Sierra Club, National Wildlife Federation, Natural Resources Defense Council, National Audubon Society, American Whitewater, Friends of the Earth, Trout Unlimited, and the Izaak Walton League are all opposed to this bill.

I also see no justification for approving S. 422, which would exempt all small hydroelectric projects in Alaska from FERC jurisdiction. This bill would substitute an undeveloped state process for FERC's hydropower licensing process, with no assurance that fish, wildlife and recreational values will be accorded proper treatment. I see no reason why Alaska should be exempted from the rules that govern hydropower facilities in the other 49 states, and would note that this bill is also strongly opposed by the environmental community.

I am opposed to these bills, and I intend to offer a series of amendments today to address some of the worst aspects of these ill-conceived proposals. I urge my colleagues to support these amendments aimed at assuring that the integrity of the hydroelectric relicensing process remains intact.